

112TH CONGRESS  
2D SESSION

# S. 3334

To protect homes, small businesses, and other private property rights by limiting the power of eminent domain.

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IN THE SENATE OF THE UNITED STATES

JUNE 21, 2012

Mr. CORNYN (for himself and Mr. PAUL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect homes, small businesses, and other private property rights by limiting the power of eminent domain.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Protection of Homes, Small Businesses, and Private Property Act of 2012”.

**6 SEC. 2. FINDINGS.**

7       Congress finds the following:

8           (1) The protection of homes, small businesses, and other private property rights against government seizures and other unreasonable government

1 interference is a fundamental principle and core  
2 commitment of our Nation's founders.

3 (2) As Thomas Jefferson wrote on April 6,  
4 1816, the protection of such rights is “the first prin-  
5 ciple of association, the guarantee to every one of a  
6 free exercise of his industry, and the fruits acquired  
7 by it”.

8 (3) The Fifth Amendment of the United States  
9 Constitution specifically provides that “private prop-  
10 erty” shall not “be taken for public use, without just  
11 compensation”.

12 (4) The Fifth Amendment thus provides an es-  
13 sential guarantee of liberty against the abuse of the  
14 power of eminent domain, by permitting government  
15 to seize private property only “for public use”.

16 (5) On June 23, 2005, the United States Su-  
17 preme Court issued its decision in *Kelo v. City of*  
18 *New London*, 545 U.S. 469.

19 (6) As the Court acknowledged, “it has long  
20 been accepted that the sovereign may not take the  
21 property of A for the sole purpose of transferring it  
22 to another private party B”, and that under the  
23 Fifth Amendment, the power of eminent domain  
24 may be used only “for public use”.

1                             (7) The Court nevertheless held, by a 5–4 vote,  
2                             that government may seize the home, small business,  
3                             or other private property of one owner, and transfer  
4                             that same property to another private owner, simply  
5                             by concluding that such a transfer would benefit the  
6                             community through increased economic development.

7                             (8) The Court’s decision in Kelo is alarming be-  
8                             cause, as Justice O’Connor accurately noted in her  
9                             dissenting opinion, joined by the Chief Justice and  
10                             Justices Scalia and Thomas, the Court has “effec-  
11                             tively . . . delete[d] the words ‘for public use’ from  
12                             the Takings Clause of the Fifth Amendment” and  
13                             thereby “refuse[d] to enforce properly the Federal  
14                             Constitution”.

15                             (9) Under the Court’s decision in Kelo, Justice  
16                             O’Connor warns, “The specter of condemnation  
17                             hangs over all property. Nothing is to prevent the  
18                             State from replacing any Motel 6 with a Ritz-  
19                             Carlton, any home with a shopping mall, or any  
20                             farm with a factory.”.

21                             (10) Justice O’Connor further warns that,  
22                             under the Court’s decision in Kelo, “Any property  
23                             may now be taken for the benefit of another private  
24                             party”, and “the fallout from this decision will not  
25                             be random. The beneficiaries are likely to be those

1 citizens with disproportionate influence and power in  
2 the political process, including large corporations  
3 and development firms. As for the victims, the gov-  
4 ernment now has license to transfer property from  
5 those with fewer resources to those with more. The  
6 Founders cannot have intended this perverse re-  
7 sult.”.

8                 (11) It is appropriate for Congress to take ac-  
9                 tion, consistent with its limited powers under the  
10                 Constitution, to restore the vital protections of the  
11                 Fifth Amendment and to protect homes, small busi-  
12                 nesses, and other private property rights against un-  
13                 reasonable government use of the power of eminent  
14                 domain.

15                         (12) It would also be appropriate for States to  
16                         take action to voluntarily limit their own power of  
17                         eminent domain. As the Court in Kelo noted, “noth-  
18                         ing in our opinion precludes any State from placing  
19                         further restrictions on its exercise of the takings  
20                         power.”.

**21 SEC. 3. PROTECTION OF HOMES, SMALL BUSINESSES, AND  
22 OTHER PRIVATE PROPERTY RIGHTS.**

23       (a) IN GENERAL.—The power of eminent domain  
24 shall be available only for public use.

1       (b) PUBLIC USE.—In this Act, the term “public use”  
2 shall not include economic development.

3       (c) APPLICATION.—This Act shall apply to—  
4           (1) all exercises of eminent domain power by  
5           the Federal Government; and  
6           (2) all exercises of eminent domain power by a  
7           State or local government using Federal funds.

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